



**California State Board of Pharmacy**

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STATE AND CONSUMERS AFFAIRS AGENCY  
DEPARTMENT OF CONSUMER AFFAIRS  
ARNOLD SCHWARZENEGGER, GOVERNOR

August 11, 2004

From: Patricia Harris, Executive Officer

RE: Schedule II Prescriptions and Section 11167 of the Health and Safety Code

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Dear Pharmacists:

It has come to the attention of the Board of Pharmacy that some prescribers have had difficulty obtaining the new tamper resistant forms required by Senate Bill 151 to prescribe Schedule II controlled substances. Prescribers who run out of triplicate forms and are not able to obtain the new prescription forms may immediately encounter situations where providing good patient care requires prescribing Schedule II controlled substances. In such cases prescribers may use the exception to the special form requirement in Section 11167 (copied below) of the Health and Safety Code to prescribe a Schedule II controlled substance for a patient in need. Some pharmacists have expressed concerns about filling these prescriptions.

The Board of Pharmacy is most concerned that the healthcare needs of legitimate patients be met during the transition to the new prescription forms. Pharmacists receiving prescriptions with the 11167 notation should exercise their professional judgment in filling these prescriptions with the highest priority given to evaluating whether a given prescription is authentic and issued for a legitimate medical purpose. The board's enforcement efforts will not focus on detailed adherence to the particulars of Section 11167, but rather to pharmacists fulfilling their responsibility to ensure that the prescription is issued for a legitimate medical purpose.

Prescribers need to make good faith efforts to obtain prescription forms in compliance with the law. The board is concerned that patient care should not be interrupted so long as both prescribers and pharmacists make good faith efforts to comply with this new law.

The Board of Pharmacy anticipates that new forms should be readily available no later than November 2004, as new printers are approved. We see the use of the 11167 exception as a temporary solution during this transition.

Additional information on Senate Bill 151 is available on the Board of Pharmacy website  
<http://www.pharmacy.ca.gov>.

**Health and Safety Code**

**11167.** Notwithstanding subdivision (a) of Section 11164, in an emergency where failure to issue a prescription may result in the loss of life or intense suffering, an order for a Schedule II controlled substance may be dispensed on an oral, written, or electronic data transmission order, subject to all of the following requirements:

(a) The order contains all of the information required by subdivision (a) of Section 11164.

(b) Any written order is signed and dated by the prescriber in ink, and the pharmacy reduces any oral or electronic data transmission order to hard copy form prior to dispensing the controlled substance.

(c) The prescriber provides a written prescription on a triplicate prescription form or a controlled substance prescription form that meets the requirements of Section 11162.1, by the seventh day following the transmission of the initial order; a postmark by the seventh day following transmission of the initial order shall constitute compliance.

(d) If the prescriber fails to comply with subdivision (c), the pharmacy shall so notify the Bureau of Narcotic Enforcement in writing within 144 hours of the prescriber's failure to do so and shall make and retain a hard copy, readily retrievable record of the prescription, including the date and method of notification of the Bureau of Narcotic Enforcement.

(e) This section shall become operative on July 1, 2004, and shall remain in effect until January 1, 2005, at which time it is repealed.